

IN THE UNITED STATES ARMY  
FIRST JUDICIAL CIRCUIT

UNITED STATES )

v. )

MANNING, Bradley E., PFC )

U.S. Army, (b) (6) )

Headquarters and Headquarters Company, U.S. )

Army Garrison, Joint Base Myer-Henderson Hall, )

Fort Myer, VA 22211 )

**RULING: DEFENSE MOTION -  
RECORD AND TRANSCRIBE  
RCM 802 CONFERENCES**

DATED: 6 June 2012

Defense moves the Court to order all RCM 802 conferences be recorded and transcribed for the record. The Government opposes. After considering the pleadings, evidence presented, and argument of counsel, the Court finds and concludes the following:

1. The trial schedule developed by the Court and the parties provides for Article 39(a) sessions to be held approximately every 5-6 weeks. To date, there have been Article 39(a) sessions held on 23 February, 15-16 March, 24-26 April, and the current session from 4-6 June 2012.
2. RCM 802 provides that after referral, the military judge may, upon request of either party or *sua sponte*, order one or more conferences with the parties to consider such matters as will promote a fair and expeditious trial. Conferences need not be made part of the record, but matters agreed upon at a conference shall be included in the record orally or in writing. Failure of a party to object at trial to failure to comply with RCM 802 waives this requirement. No party may be prevented from making any argument, objection, or motion at trial. The discussion to the rule states that the purposes of RCM 802 conferences is to inform the military judge of anticipated issues and to expeditiously resolve matters on which the parties can agree, not to litigate or decide contested issues.
3. The Court has been holding RCM 802 conferences with counsel during and following the Article 39(a) sessions and by telephone on 8 February 2012, 28 March 2012, and 30 May 2012. Each of these conferences have been synopsisized on the record, and the Court has invited the parties to add detail to the Court's synopsis.
4. Prior to the current motion dated 2 June 2012, the Defense has not objected to conducting RCM 802 conferences.
5. RCM 802 does not require that such conferences be recorded and transcribed. The Court will continue to hold such conferences with the parties to address administrative, logistics, and scheduling issues. If either party objects to discussion of an issue in an RCM 802 conference,

the conference will be terminated and the issue will be addressed at the next Article 39(a) session.

6. The Court notes that the parties have raised substantive issues in the middle of Article 39(a) scheduling periods that, if not addressed expeditiously, will delay the trial. Therefore, the Court, in conjunction with the parties, will build in an additional Article 39(a) session into the Court calendar approximately midway in between in each scheduled Article 39(a) session to address such issues that arise. If additional substantive issues arise that require expeditious resolution, the Court, will schedule additional *ad hoc* Article 39(a) sessions as necessary.

**RULING:**

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1. The Defense Motion to Record and Transcribe RCM 802 conferences is **DENIED**.
  2. RCM 802 conferences will not be held over the objection of a party.
  3. The Court will schedule an additional Article 39(a) session in between currently scheduled sessions to address on the record any additional issues that arise in between scheduled sessions.

So Ordered this 6<sup>th</sup> day of June 2012. .



DENISE R. LIND  
COL, JA  
Chief Judge, 1<sup>st</sup> Judicial Circuit